The Court must be satisfied that the interest is *bonâ fide*, and otherwise as stated in section 531. The agreement must also bear the Court-fee stamp for a suit of the nature in question. The Court may give a decree on this "special case" as it might in a regular suit.

## SECTION XI.—APPEALS.

### § 1.—*When an Appeal lies.*

The remaining subject to be noticed is that of Appeals.

The result of all civil proceedings is either a *decree* in a suit (allowing the claim and costs or part of the claim, or costs only, or dismissing a claim with or without an order for some one to pay certain costs), or else it is an *order* in some proceeding not being a suit.

All *decrees* (not being Small Cause Court judgments) are appealable at least to one Court. The term "decree" is defined in the Code so that it can always be ascertained whether the judgment objected to is a "decree" or only an an "order."

No *orders* are appealable except those set out in 29 clauses under section 588.

Where there has been one appeal there may be a second appeal to the High Court on the ground of an error in law, or important error in procedure affecting the decision of the case on the merits. The terms of section 584 must, however, be exactly looked to. Generally, also, no second appeal lies in cases of such a kind that they would be cognizable by a Small Cause Court, the amount or value of the subject-matter of the original suit not exceeding Rs. 500. It must, however, be remembered that there may be local rules in other laws allowing a second appeal in such cases, for example in the Panjab. (Act XVII of 1877, sections 38-9)[3].

Lastly there is, in cases of the value of Rs. 10,000 and upwards (the amount being in dispute in *appeal*) a final appeal to the Queen in (Council heard by the Privy Council.) But if the decree

[3] These sections practically allow three appeals in one case.

appealed from affirms the decree in the Court below (two Courts agree *i.e.*, in passing the decree), there cannot be such an appeal except on "some substantial question of law" being involved.

The procedure for applying to appeal to the Privy Council, is laid down in Sections 598 *et seq.*

### § 2.—*Procedure in Appeals.*

An appeal is presented in the form of a written "memorandum" with a copy of the decree and of the judgment (unless the Court expressly dispenses with it).

The memorandum is to consist of numbered paragraphs, setting forth concisely and under distinct heads, the grounds of objection.

The appellant cannot without leave take up other grounds than those in his memorandum, but the Court itself may consider the case from any point of view and on any ground. (Provided that the other side (the respondent) has had an opportunity of contesting the case on those grounds.) (Section 542.)

If the case is clear, the Court may confirm the judgment without giving notice to the other party, and with or without first sending for the record of the case. (Section 551.)

Notice of the day for hearing (when the procedure under section 551 is not followed) is given by notice stuck up in the Court-house. A copy is also sent to the Lower Court to be served on the respondent.

If the appellant does not attend, (after a day has been fixed and the respondent called) the appeal will be dismissed (*only that this is compulsory*) for default, but may be re-admitted for cause shown. (Sections 556-8.) If the respondent does not appear, the case will be heard *ex parte*. An *ex parte* decision may, however, be set aside for cause shown under section 560. It may be that the respondent, though he has not filed a cross-appeal,—that is, an appeal on *his* side, may object to the decree in part or wholly; if he has given seven days' notice[4] before the date of hearing, he may take any

[4] The contents of the notice are to be a statement of the objections he has, just as in a memorandum of appeal.

objection that he likes to the decree besides answering appellant's objections. (Section 561.)

### § 3.—*What Orders are passed on appeal.*

In appeal, one of three things will happen—

(1) The Court will set aside the decree and order a new trial or decision (Section 562.)

(2) The Court will at once pass judgment, confirming, modifying or reversing the Lower Court's order.

(3) The Court will (section 566) remand the case for additional information on some specific issue, in which case the record comes back (with the finding, evidence, &c.) to the Appellate Court, which then passes a final order.

In the first case, it will be found that the Lower Court has decided the suit on some preliminary point, which has precluded it from going into the case on its merits, or at least from hearing some evidence of fact which appears essential to the determination of the rights of the parties. If this point is found against the Lower Court by the Appellate Court, naturally the case will be remanded for hearing on the merits, either generally or on some specific issue, or to take evidence on the point excluded. (Section 562.) This is the only case in which the entire case can be remitted to the Lower Court for a new decision.

In the third case the Appellate Court may send to the Lower Court to take evidence on certain issues, and to take additional evidence thereon, and return the finding and record of evidence to the Appellate Court. (Section 566).

### § 4.—*New Evidence on Appeal.*

Otherwise neither party is at liberty to produce any further evidence on appeal: but the Court may allow, on its own motion, any document to be produced, or witness to be examined, on recording its reasons. (Section 568.) In all cases this additional evidence must be on specific points to be stated. (Section 570.)

### § 5.—*Reviews.*

A *review* of judgment by the Court originally pronouncing it, if no appeal is allowed, or none has been preferred, may be applied for; but only on the ground of the discovery (*a*) of "new and important matter or evidence, which, after the exercise of due diligence was not within his knowledge or could not be produced" by the applicant at the time of the decree or order[5]; or (*b*) on account of some mistake or error apparent on the face of the record; or (*c*) for any other sufficient reason. (Section 623.)

The review must, *except* in case of either of the reasons (*a*) or (*b*), be made to the same *Judge* who gave the judgment. This does not apply to a High Court. (Section 624.)

If the review is granted (for reasons to be recorded), notice must be given to the other party to be heard against the review.

There is no review of a review, nor a review of an order on application to review. (Section 629).

### § 6.—*Miscellaneous.*

At the end of the Code are a few miscellaneous provisions regarding the appearance of women in Court, the exemption of certain persons of rank from personal appearance, and the language of Courts, &c. For this, if necessary, the Code may be referred to. (Section 640 to end.)

[5] And there must be "strict proof" of this allegation. (Section 626.)

*Note on the Court Fees Act (Act VII of 1870).*

All the documents used in a suit or appeal, and a list of which is given in Schedule I appended to the Court Fees Act, require the *ad valorem* fees; and all those (chiefly applications and petitions) in Schedule II require the *fixed* fees, therein specified.

No document of the kind can be filed, exhibited or recorded without the proper fee-stamp.

Section 7 must be looked to see how to calculate the value of stamp for *plaints* of different kinds, and section 8 for *appeals*. Applications and petitions to Court not being plaints or appeals require fixed fees as shown in Schedule II. For example, application for copies can be given on one anna fee. First applications for witnesses to be summoned are free. Applications in petty cases under Rs. 50 value are on one anna. In other cases the fee is eight annas.

Certain documents mentioned in section 19 are exempt from fees. These are not likely to come under a Forest Officer's notice, except indeed that any application for money due by Government, and any application to cut timber in Government forests or otherwise relating to such forests," are exempt[6].

Besides the fees paid by means of stamps on plaints and petitions, fees are also levied for the service of process summons, &c., (*talabána*). Such fees are levied according to rules made by the High Court, confirmed by the local Government and sanctioned by the Governor-General in Council. (Section 20.)

All fees, either on plaints, appeals, applications, copies, decrees statements, or for service of process, are levied by stamps (section 25), which may be impressed or adhesive, or partly one and partly the other, as may be directed by the Governor-General in Council by Notification in *Gazette of India*.

Adhesive labels are now used, and must not be confused with stamps under Act I of 1879, for the one will not serve the purpose of the other. A person writing a plaint on a non-judicial stamp,

[6] Though why such should be mentioned at all in a *Court* Fees Act, I do not know.

for example, would not be held to have paid the fee; he would have to get a Court fee stamp, and his other stamp would go for nothing (unless indeed under the provisions of Act I, he could recover it as an accidentally spoiled stamp).

These fees, or such of them as may be allowed, form (together with pleaders' fees and other expenses) costs in the suits.

Government suits are not in any way exempt from Court fees of any kind.

THE END.

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